WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 286

(Senators Prezioso, Bailey, Edgell, Foster, Hunter, Kessler, Minard, Unger, Deem, Guills, Yoder, Love, McCabe, Plymale and Jenkins, original sponsors)

[Passed March 6, 2008; in effect from passage.]
AN ACT to amend and reenact §9-6-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6A-9 of said code, all relating to personal immunity from civil liability for adult protective services workers and child protective services workers performing employment-related duties and responsibilities within their official capacity.
Be it enacted by the Legislature of West Virginia:

That §9-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6A-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

(a) There is hereby established and continued within the Department of Health and Human Resources the system of adult protective services heretofore existing.

(b) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the organization and duties of the adult protective services system and the procedures to be used by the department to effectuate the purposes of this article. The rules may be amended and supplemented from time to time.

(c) The secretary shall design and arrange such rules to attain, or move toward the attainment, of the following goals to the extent that the secretary believes feasible under the provisions of this article within the state appropriations and other funds available:

(1) Assisting adults who are abused, neglected or incapacitated in achieving or maintaining self-sufficiency and self-support and preventing,
reducing and eliminating their dependency on the state;

(2) Preventing, reducing and eliminating neglect and abuse of adults who are unable to protect their own interests;

(3) Preventing and reducing institutional care of adults by providing less intensive forms of care, preferably in the home;

(4) Referring and admitting abused, neglected or incapacitated adults to institutional care only where other available services are inappropriate;

(5) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings;

(6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility residents through the joint efforts of the various agencies of the Department of Health and Human Resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities and county prosecutors;

(7) Preventing, reducing and eliminating abuse and neglect of residents in nursing homes or facilities; and

(8) Coordinating investigation activities for complaints of abuse and neglect of incapacitated adults and facility residents among the various agencies of the Department of Health and Human Resources, the adult protective services system, the state and regional
long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as appropriate.

(d) No adult protective services caseworker may be held personally liable for any professional decision or action thereupon arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon: Provided, That nothing in this subsection protects any adult protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.

(e) The rules proposed by the secretary shall provide for the means by which the department shall cooperate with federal, state and other agencies to fulfill the objectives of the system of adult protective services.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-9. Establishment of child protective services; general duties and powers; immunity from civil liability; cooperation of other state agencies.

(a) The state department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

(b) The local child protective services office shall
investigate all reports of child abuse or neglect:

Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective services office shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families: Provided, however, That under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

Each local child protective services office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all such reports under the names of the children, the family and any person substantiated as being an abuser or neglecter by investigation of the Department of Health and Human Resources, with use of such cross-filing of such person’s name limited to the internal use of the department;

(2) Provide or arrange for emergency children’s services to be available at all times;

(3) Upon notification of suspected child abuse or
neglect, commence or cause to be commenced a thorough investigation of the report and the child’s environment. As a part of this response, within fourteen days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the court;

(4) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within seventy-two hours there shall be a face-to-face interview with the child or children and the development of a protection plan, which may involve law-enforcement officers or the court; and

(5) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family law master may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring circuit court or family law master within the time frames set forth by the circuit court or family law master.

(c) In those cases in which the local child protective services office determines that the best interests of the child require court action, the local child protective services office shall initiate the appropriate legal proceeding.

(d) The local child protective services office shall be
responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child’s family and those responsible for the child’s care.

(e) To carry out the purposes of this article, all departments, boards, bureaus and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective services plan shall, upon request, provide to the local child protective services office such assistance and information as will enable it to fulfill its responsibilities.

(f)(1) In order to obtain information regarding the location of a child who is the subject of an allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources may serve, by certified mail or personal service, an administrative subpoena on any corporation, partnership, business or organization for the production of information leading to determining the location of the child.

(2) In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party if the person served is a resident; or (B) the circuit court of the county in which the local child protective services office conducting the investigation is located if the person served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is
one the Division of Child Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not already in the possession of the Division of Child Protective Services; and (E) any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

(g) No child protective services caseworker may be held personally liable for any professional decision or action thereupon arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon: Provided, That nothing in this subsection protects any child protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within be approved this the Day of , 2008.

Governor
PRESENTED TO THE GOVERNOR

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